

RESEARCH ARTICLE

The Progressive Monarchy of Bhutan: A Not-So-Absolute Monarchy to a Democratic Constitutional Monarchy

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Abstract

This article provides a descriptive account of the evolution of the Bhutanese monarchy, and normative claims about its endurance and its nature, suggesting that the monarchy is both the expression of as well as the guardian of the country's constitutional identity. Bhutan became a democratic constitutional monarchy by adopting the written Constitution in 2008 after a successful 100 years of hereditary monarchy. The willingness of successive monarchs to evolve based on changing times, their ability to ensure stability and continuity, and work for the benefits of the people and country guided by the principles of Buddhist kingship seem to have contributed not only in them benefitting from unqualified support of the people, but also in attaining the status of an expression of Bhutanese constitutional identity.

Keywords: constitutional monarchy; GNH; *Kidü*; constitutional identity; dual system; Dharmaraja

1. Introduction

Bhutan, founded in the 1600s by Zhabdrung Ngawang Namgyel, is the only surviving monarchy in the South Asian region. While originally established as a theocratic monarchy, through centuries of evolution, it became a democratic constitutional monarchy in 2008. In 1907, after centuries of infightings, Bhutan became a hereditary monarchy when a social contract was signed between the first elected king and the representatives of the people. After a century of hereditary monarchy, sovereign power was handed back to the people in 2008 through the establishment of a democratic constitutional monarchy. The Bhutanese monarchy has not only withstood the test of time; it continues to enjoy very strong popular support. As it evolved, the monarchy has become a very important feature of Bhutan's constitutional identity that carries significant cultural, social, and legal-political meaning.

The monarchy as an expression of Bhutanese constitutional identity can be better understood by exploring the roles played by the monarchy in shaping and promoting the Bhutanese polity and understanding the nature of the monarchy itself. To do that, the article will focus on four questions: first, it will explore the roles that the monarchy has played in shaping the Bhutanese polity by studying how and why it has evolved, culminating in a constitutional monarchy; second, it explore the roles played by the monarchy after the adoption of the Constitution—its constitutional functions, ceremonial functions, services, and welfare functions; third, it will examine both legal and customary mechanisms of regulating or constraining the Bhutanese monarchy; and fourth, it will explore the reasons for the endurance of the Bhutanese monarchy.

The article will, with a normative assessment of the nature of the Bhutanese monarchy, reflect on how it has become an essential feature of the identity of both the Bhutanese Constitution (as understood from an analysis of the text of that document) as well as the polity as a whole (as implied from the country's social, cultural, and political context).

2. The evolution of the Bhutanese monarchy

2.1 The establishment of a theocratic monarchy

While the making of the modern Bhutanese Constitution began as recently as 2001, the gradual process of constitutionalization began as early as the 1600s. Zhabdrung Ngawang Namgyel, a Buddhist figure who came to Bhutan in 1616 from Tibet, unified Bhutan and established a centralized governance system.¹ He unified the villages of the region as a means of defence against political and military invasions from Tibet. Over time, he introduced a dual system of governance—the administration of governance according to two systems of law. The origin of the concept of the dual system is attributed to the Tibetan *King Songtsen Gampo*, who reigned from 617 to 650 and was dubbed as the first *Dharmaraja*.² He is believed to have ruled his subjects according to a dual system—as a Buddhist king basing his political activities, including secular law (*Gyalthrim*), on Buddhist principles or Dharma (*Choethrim*), to promote the happiness of the people. According to John Ardussi, the “union of religion and secular government in a single administrative apparatus” was used as an abstract theory of governance in Tibet.³ However, Zhabdrung established an institutional structure in 1625 to practically implement this governance system by appointing a *Desi* as the civil administrator who was responsible for civil and political administration, and a *Je Khenpo* as the chief abbot of the monastic body from among senior Buddhist monks.⁴ Zhabdrung himself remained the head of these two branches—equivalent to the head of state. Therefore, he was known as a *Choegyäl* (*Dharma Raja* or Buddhist king).

The concept of the *Dharmaraja* is associated with the Buddhist values and principles—the king who rules in accordance with the teachings of the Buddha. The dual system of governance established by Zhabdrung, therefore, recognized happiness as the ultimate end of all sentient beings, and accordingly also the purpose of law and government. This latter claim is evidenced in legal codes enacted in the seventeenth and eighteenth centuries. According to the law inscribed on the stone slate, the ultimate objective of the Drukpa rule (based on the dual system) and the introduction of the law in Bhutan is to bring benefit and happiness to all beings of the country. The 1729 Legal Code (*Kathrim*) states:

If there is no law, happiness will not come to beings. If beings do not have happiness there is no point in the Hierarchs of the Drukpa upholding the doctrine of the dual system. Therefore, holding the precious doctrine in one's heart, it is necessary to enact legal observances like those of the *Dharmaraja Songtsen Gampo* which establish a justice devoid of bias or partiality.⁵

The government can promote the happiness of the people by enacting and executing laws based on Buddhist values and principles (*Dharma*). The Code states that the ruler and his ministers are required to examine or investigate the general welfare of the subjects

¹ Phuntsho (2013), pp. 217–49; Tobgye (2016), p. 53.

² Doney (2017), pp. 14–8.

³ Ardussi (2004), pp. 11, 15.

⁴ *Ibid.*, pp. 15–8.

⁵ Aries (2009), p. 131.

exclusively based on the state of their happiness. Happiness, thus, was not only a policy goal but the sole justification for the government's existence, and the main function of the theocratic Buddhist king and his officers was ensuring the welfare of the people.⁶

2.2 The evolution of hereditary monarchy

Zhabdrung's death led to political instability with uncertainty in the identification of his reincarnation and appointment of the *Desi*. The two centuries that followed were marked by frequent uprisings against the *Desi*, and infighting among regional leaders. Amongst those leaders, in 1886, Ugyen Wangchuck ascended to the position of *Trongsa Penlop*.⁷ He asserted control over neighbouring *Dzongkhags*⁸ through negotiation and battle. Geopolitically, when called upon to join Tibet in a major conflict with British India,⁹ Ugyen Wangchuck offered to resolve the conflict peacefully, and he indeed successfully mediated the dispute.¹⁰ Consequently, British India honoured him with the title of "Knight Commander of the Indian Empire." He cultivated good relations with British India by negotiating treaties and encouraging trade.¹¹ These events were instrumental in ensuring that Bhutan was not colonized by any foreign powers.

Given the popular support he had earned, Ugyen Wangchuck was proposed as the first hereditary king. In 1907, an extraordinary meeting of representatives of various influential segments of Bhutanese society—including the *Je Khenpo*, other religious leaders, government councillors, local governors, military and civil service officers, and other popular representatives¹²—negotiated an agreement establishing the Wangchuck Dynasty, viz. a hereditary monarchy ruled by the civilian king. The document was signed on 17 December 1907 through a formal signing of the *Genja*—leading to the coming-into-existence of a social contract between the First King, the monastic body, the officers, and the representatives of the people of Bhutan that conferred sovereign power upon the Wangchuck family.¹³ The institution of a hereditary monarchy put an end to the political instability that ensued with the demise of Zhabdrung, and in turn became the practical symbol of unity. Interestingly, the pre-existing governance structure and principles were largely retained with very few changes. The welfare of the people remained the main goal of the government. For the theocratic monarchy, "welfare" entailed the provision of religious and spiritual services to the people, while the hereditary monarchy initiated modern education and taxation reforms to promote the welfare of the people.

2.3 The democratization of Bhutan: the initiative from the above

While the First and the Second Kings continued to consolidate the monarchy through centralization, by the 1950s, the Third King Jigme Dorji Wangchuck had begun a process of decentralization—giving back the power to the people.¹⁴ He established robust institutional structures including the Council of Ministers, other important public offices as well as a National Assembly, a unicameral legislature.¹⁵ Members of the latter body were

⁶ Ardussi, *supra* note 3.

⁷ *Trongsa* is the seat of the leader of the Central Region of Bhutan and *Penlop* is a title given to the regional leader.

⁸ Equivalent of "district" in English.

⁹ Jamtsho (2016).

¹⁰ *Ibid.*, pp. 67–9.

¹¹ *Ibid.*, pp. 69–72.

¹² Phuntsho, *supra* note 1, pp. 518–21.

¹³ *Ibid.*, p. 521.

¹⁴ Masaki (2013), p. 17.

¹⁵ Needup (2013), p. 13.

elected from the 20 *Dzongkhags* by the people.¹⁶ While the main function of the National Assembly was to deliberate the adoption of new laws, it also functioned as a platform for sharing the decision-making process with elders, giving the people an opportunity to voice their concerns, and allowing the King to share his plans and visions.¹⁷ Initially, the King retained the power to amend all decisions of the National Assembly. Later, on the King's proposal, the National Assembly resolved to restrict the King from vetoing its decisions.¹⁸ However, if the King had serious doubts about the soundness of any decision, he was authorized to command the National Assembly to reconsider the matter.¹⁹ In his effort to establish Bhutan as a constitutional monarchy, he introduced the system of a no-confidence vote that requires the king to resign if a two-thirds majority votes in favour of abdication.²⁰ He subjected himself to a no-confidence vote twice and survived with overwhelming support both times.²¹ In 1972, he proposed that the threshold for such a vote should be reduced to a simple majority, although the National Assembly voted against the proposal citing the importance of monarchy for the country's political stability.²²

In the 1960s, the King established other proto-democratic organs with responsibility regarding the legislative, executive, and judicial affairs. In 1965, the King established the Royal Advisory Council, a kind of upper house of Parliament, which advised the King and the government and acted as a review body.²³ In the early 1960s, he began appointing *Thrimpons* (judges) in *Dzongkhags*, and in 1967, he established the high court to adjudicate appeals from the *Dzongkhag* courts.²⁴ In 1968, after consultation with the National Assembly, he introduced a Cabinet of Ministers to whom he delegated executive power.²⁵ He further established various public offices such as a development department, a finance department, an education division, a health division, a power division, a forest division, an agriculture division, and a national post office.²⁶ To staff these offices, he introduced the civil service.

The Third King's reign marked the onset of an era of modernization. The institutions just mentioned were set up to ensure the implementation of the government's policies and developmental activities, viz. a system of so-called "five-year plans" that the King had initiated in 1961.²⁷ This system remains in place to the present day. These five-year plans were deliberated and approved by the National Assembly, allowing the people to participate in the decision-making process through their elective representatives. The King as a main driver of change, supported by the people, thus managed to establish Bhutan as a welfare state by focusing on free education, universal health care, and sustainable social and economic development programmes. Therefore, he is regarded as the father of modern Bhutan.²⁸

¹⁶ Masaki, *supra* note 14, p. 17.

¹⁷ Phuntsho, *supra* note 1, p. 566.

¹⁸ National Assembly, 29th Session, https://www.nab.gov.bt/assets/uploads/docs/resolution/2014/29th_Session.pdf (accessed February 2022).

¹⁹ *Ibid.*

²⁰ Resolution of the 30th Session, https://www.nab.gov.bt/assets/uploads/docs/resolution/2014/30th_Session.pdf (accessed February 2022).

²¹ *Ibid.*; National Assembly, 34th Session, https://www.nab.gov.bt/assets/uploads/docs/resolution/2014/34th_Session.pdf (accessed February 2022).

²² National Assembly, 36th Session, https://www.nab.gov.bt/assets/uploads/docs/resolution/2014/36th_Session.pdf (accessed February 2022).

²³ Needup, *supra* note 15; Phuntsho, *supra* note 1, p. 567.

²⁴ Whitecross (2004), p. 361; Jamtsho, *supra* note 9, pp. 142–3; Phuntsho, *supra* note 1, p. 567.

²⁵ Masaki, *supra* note 14, p. 17.

²⁶ Jamtsho, *supra* note 9, p. 150.

²⁷ *Ibid.*, p. 105.

²⁸ Mathou (1999), p. 115.

The Fourth King of Bhutan, Jigme Singye Wangchuck, ascended to the throne at the age of sixteen in 1972 (although he was officially crowned as the king on 2 June 1974), upon the sudden death of his father. The King immediately called for popular participation in governance reasoning that if the people and government work together as one, the country and people will achieve prosperity, peace, and happiness.²⁹ To promote such popular participation, the King initiated decentralization by setting up governance bodies at both the *Dzongkhag* and village (*Gewog*) levels in 1981 and 1991, respectively,³⁰ with local leaders elected through universal suffrage.³¹ In 1998, the King delegated the power of selecting ministers to the National Assembly. On his initiative,³² the system of the no-confidence vote was retained.³³ The King further established various important independent institutions that would later be institutionalized through a written constitution, including *Dungkhag* (subdistrict) courts (1978), the Royal Civil Service Commission (1982), the Royal Audit Authority (1985), the Office of Legal Affairs (1999, later the Office of the Attorney General), and the Election Commission and the Anti-Corruption Commission (2006). In 1992, the King granted autonomous status to the national newspaper, the *Kuensel*, and the national radio network, the Bhutan Broadcasting Service. Previously, the *Kuensel*, founded in 1967, and the BBS, founded in 1979, were fully operated and controlled by the government.³⁴

The Fourth King also enunciated the doctrine of “Gross National Happiness,” or GNH, which has been embraced as the central planning framework. In his 1986 decree to the National Planning Commission, he stated that progress under each Plan would be measured by whether the people were happy and living a comfortable life.³⁵ His vision for GNH requires that all elements of Bhutan’s uniqueness and identity, beliefs and values, and security and living in harmony with the natural environment should never be forsaken and that all these aspects must be nurtured in a harmoniously balanced manner.³⁶ Initially, GNH was based on four pillars: sustainable socioeconomic development, preservation and promotion of culture, environmental conservation, and good governance.³⁷ Later, it became a fully fledged alternative to pure economic development—with the expansion of the four pillars into nine measurable domains, 33 indicators, and 124 corresponding variables.³⁸ This innovation in Bhutan’s development framework institutionalized the happiness of the people as the objective of the theocratic monarchy, in line with earlier traditions.

2.4 The making of the Constitution and the constitutionalization of the monarchy

2.4.1 The constitution-making process

On 4 September 2001, the Fourth King commanded that a written Constitution should be drafted that would provide a democratic system of government well suited for the future wellbeing of the nation, and devised at a time when Bhutan enjoyed unprecedented peace and stability.³⁹ Thereafter, a 39-member Constitution Drafting Committee was constituted,

²⁹ HRH Princess Sonam Dechan Wangchuck’s Speech (2014), <https://royaldish.com/index.php?topic=9589.msg827139;topicseen> (accessed September 2022); Galay (1999), p. 56.

³⁰ Nishimizu (2008), p. 203; Dorji (2008), p. 92.

³¹ Dorji, *supra* note 30, p. 93.

³² Nishimizu, *supra* note 30, pp. 104–5; Dorji, *supra* note 30, p. 94.

³³ Nishimizu, *ibid.*, p. 106.

³⁴ *Ibid.*, p. 45.

³⁵ *Ibid.*, p. 7.

³⁶ HRH Princess Sonam Dechan Wangchuck’s Speech, *supra* note 29.

³⁷ Ura et al. (2012), p. 7.

³⁸ Long (2019), pp. 123–5.

³⁹ Tobgye, *supra* note 1, pp. 21–2.

chaired by the chief justice of Bhutan. Other members included elected representatives from the 20 *Dzongkhags*, two representatives elected by the Central Monastic Body, the Speaker of the National Assembly, seven members of the Royal Advisory Council, two other members from the judiciary, and six representatives of the government.⁴⁰ The Committee was established as an independent body, so with the King deliberately avoiding any direct involvement in the drafting process,⁴¹ though its work was based upon an outline provided by the King.⁴² This outline included the need for a preamble, provisions concerning the fundamental rights and duties of citizens, the roles and responsibilities of the king, the three branches of the government and other constitutional bodies, the rules governing constitutional amendment, and other provisions necessary and beneficial to the country and the people.⁴³ According to the chairperson of the Drafting Committee, the members reviewed more than 100 foreign Constitutions⁴⁴ and 49 Royal Decrees and Speeches,⁴⁵ as well as the *Thrimzhung Chhenmo* (The Supreme Law),⁴⁶ other acts adopted by the National Assembly, and nearly 7,500 pages of Buddhist and Bhutanese religious texts.⁴⁷

The Drafting Committee met nine times between November 2001 and May 2003, with each meeting focused on particular aspects of the Constitution. After the ninth meeting, the Drafting Committee presented a draft to the King. A public draft was promulgated at a special session of the Council of Ministers in March 2005.⁴⁸ From October 2005 onwards, the King and the chief justice spent eight months travelling to villages across the country, to explain the contents of the draft text, to seek comments and answer questions.

As the Constitution neared completion, the King—the author of GNH and the father of the Constitution, in full health at the age of 51—in an unprecedented move abdicated in favour of the Crown Prince Jigme Khesar Namgyel Wangchuck in 2006. The new King continued with the public consultation in the remaining *Dzongkhags* and oversaw the first national election of the democratically elected government before the formal adoption of the Constitution,⁴⁹ which took place by Act of Parliament on 18 July 2008.

2.4.2 Causes and conditions of constitutionalization

There are different claims concerning the factors that may have spurred on or otherwise contributed to the process of constitution-making.⁵⁰ Some have pointed to the potential of the Constitution to help alleviate rising ethnic tension⁵¹ that had taken the form of demonstrations from the *Lhotshampa* ethnic group, who are migrants from neighbouring Nepal. The Bhutanese government accepted and granted citizenship by law to all immigrants in 1958. However, when a kingdom-wide census was conducted in 1988 based on citizenship laws, the government identified many illegal immigrants.⁵² The demonstrations centred on claims of discrimination and insufficient acceptance within mainstream society,⁵³ more

⁴⁰ *Ibid.*, pp. 30–2.

⁴¹ *Ibid.*, p. 32.

⁴² *Ibid.*, p. 20.

⁴³ *Ibid.*

⁴⁴ *Ibid.*, p. 28.

⁴⁵ *Ibid.*

⁴⁶ *Thrimzhung Chhenmo* was the first modern law adopted in 1959 by the National Assembly (laws regulating marriage, inheritance, loan, penal law, etc.).

⁴⁷ Tobgye, *supra* note 1, p. 28.

⁴⁸ *Ibid.*, p. 42.

⁴⁹ *Ibid.*, p. 43.

⁵⁰ Iyer (2019), pp. 364–71.

⁵¹ *Ibid.*, p. 365.

⁵² Kinga (2020), pp. 15–6.

⁵³ Iyer, *supra* note 50, p. 365.

particularly the imposition of northern cultural identity—*Dzongkha* (as the national language), national dress (*gho* and *kira*), *Driqlam-Namzha* (traditional etiquettes), and discrimination against ethnic *Lhotshampas* including religious practice.

Another suggested factor is the massacre of the members of the Nepalese royal family in 2001,⁵⁴ with the argument being that there could similarly be a democratic challenge to the absolute monarchy in Bhutan that the Constitution, and the transition to a constitutional monarchy, could help pre-empt.⁵⁵ Similarly, the influence of the Western ideas is claimed as another contributing factor—that democracy, despite its imperfections, was still the best form of government and, as such, also suitable for introduction in Bhutan.⁵⁶

However, the push from the King is generally accepted as one of the key contributing factors.⁵⁷ Most of local commentators, observers, and scholars suggest the push from the King as the key enabler of Bhutan's democratization.⁵⁸ The popular sentiment in Bhutan is that the initiative of the King is the only meaningful factor that led to democratization: that democracy was a gift from the King.⁵⁹ The Fourth King saw democracy and decentralization as enablers of good governance to serve the people. Democracy was seen as a means to promote good governance as one of the pillars of GNH.⁶⁰ According to Sonam Kinga, the process of democratization began with the political reforms initiated by the Third and the Fourth Kings.⁶¹ These reforms enabled Bhutan to conduct parliamentary elections since 1953 with the people's representatives of the Royal Advisory Council and members of local development committees being elected by the people.⁶² Therefore, he concludes that political reforms initiated by the Third and Fourth Kings since the early 1950s were sole reasons for Bhutan's democratization.⁶³

While the people actually opposed various proposals that sought to democratize Bhutan since the 1950s, the kings continuously pushed for democratization. Similarly, there was widespread opposition to the Fourth King's decision to establish democracy through a written Constitution, from the people as well as the National Assembly.⁶⁴ However, the King persuaded the people that the best time to adopt a constitution is when a country enjoys peace and stability as opposed to during the aftermath of war or other forms of crisis.

2.4.3 Major reforms ushered by the Constitution

Looking back, the Fourth King appears to have worked towards the goal envisioned by his father—constitutionalizing the monarchy. As Nalini Jha claims, in 1972, the King started pushing Bhutan towards a constitutional monarchy even before his coronation.⁶⁵ The Drafting Committee not only constitutionalized the institutions and systems devised by the Third and Fourth Kings,⁶⁶ but also incorporated GNH values and principles as constitutional values and principles.⁶⁷

⁵⁴ *Ibid.*, p. 367.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*, pp. 368–70.

⁵⁸ *Ibid.*; Tobgye, *supra* note 1, p. 19; Dubgyur (2021), p. 37.

⁵⁹ Kinga (2009), p. 345; Kinga (2010).

⁶⁰ Iyer, *supra* note 50, p. 369.

⁶¹ Kinga, *supra* note 52, p. 19.

⁶² *Ibid.*

⁶³ Kinga, *supra* note 52, p. 19.

⁶⁴ Iyer, *supra* note 50, p. 369.

⁶⁵ Jha (2010), p. 1.

⁶⁶ Constitution of Bhutan, Art. 31.

⁶⁷ *Ibid.*, Arts 9(2), 20(1).

However, the Constitution also introduced some new provisions and aspects. Most important amongst them are: first, devolving the sovereign power to the people; and second, transforming the monarchy from an absolute to constitutional monarchy that is entrenched as a basic feature of the Constitution. The devolution of sovereign power to the people required the constitutional recognition of the citizens' right to vote,⁶⁸ a mechanism to choose and remove the government through periodic elections by constitutionalizing political parties,⁶⁹ and establishing three branches of government founded on the separation of powers.⁷⁰ Before the adoption of the Constitution, as per the letters of the *Thrimzhung Chhenmo*, the King had the power to not only exercise executive powers, but also judicial and legislative powers, although in practice the King devolved those powers to other state institutions. However, the Constitution clearly delineates government powers among the three branches—vesting executive power in the Cabinet headed by the prime minister,⁷¹ allocating the legislative power to a newly constituted bicameral legislature,⁷² and granting the judicial power to the judiciary while establishing the Supreme Court as the final Court of Appeal.⁷³

In line with popular demand, the Constitution also established the monarchy as the symbol of unity and the king as the head of state. It entrenches the monarchy as a basic feature of the Constitution by allowing the amendment to the provisions relating to this institution only through a national referendum.⁷⁴ Similarly, any change to Bhutan's form of government as a "democratic constitutional monarchy" also requires a national referendum.⁷⁵ The Constitution, therefore, recognizes the monarchy as a key feature of Bhutan's constitutional identity, which has evolved over time and continues to receive popular support.

3. The roles and powers of the constitutional monarch

The Constitution entrusts the king with the responsibility to "protect and uphold the Constitution in the best interest and for the welfare of the people of Bhutan."⁷⁶ The king as the protector of the Constitution, the head of the state, and the symbol of unity is granted significant powers. This part explores the constitutional powers of the king, which can be divided into three categories: (1) constitutional functions; (2) ceremonial and religious functions; and (3) constitution protection and the welfare functions.

3.1 The king's constitutional functions

The king as the head of the state exercises various constitutional functions that take the form of prerogatives that relate to all branches of the *trias politica*.

3.1.1 Prerogatives relating to the executive power

The functions relating to the executive power include the powers to appoint the holders of the constitutional offices,⁷⁷ government officials, and other positions. While the king can

⁶⁸ *Ibid.*, Art. 7(6).

⁶⁹ *Ibid.*, Art. 15.

⁷⁰ *Ibid.*, Art. 1(13).

⁷¹ *Ibid.*, Art. 20.

⁷² *Ibid.*, Art. 10.

⁷³ *Ibid.*, Art. 21.

⁷⁴ *Ibid.*, Art. 2(2).

⁷⁵ *Ibid.*, Art. 2(26).

⁷⁶ *Ibid.*, Art. 2(18).

⁷⁷ *Ibid.*, Art. 2(19)(a)–(h).

remove a minister or the Attorney General on the advice of the prime minister,⁷⁸ he has no role in dismissing other appointees.

As per the previous customary practice, the Constitution also empowers the king to award titles, decorations, and the like.⁷⁹ For example, the king confers ceremonial scarves and swords to cabinet ministers and executives (position-based) on their appointments. Further, the king confers different types of national awards to individuals, usually during the National Day Celebrations based on the tradition that pre-dated the adoption of the Constitution.

Also following traditional practice, the king is constitutionally empowered to promote good relations with other countries by receiving state guests and undertaking state visits to other countries.⁸⁰ Further, the king can call for information concerning international affairs from the prime minister,⁸¹ and foreign ambassadors and consuls present their credentials to the king.

Finally, the king is the supreme commander-in-chief of the defence and has the authority to declare a state of emergency (relating to security threats, other public emergencies, and financial emergencies) on the written advice of the prime minister.⁸² As the supreme commander-in-chief, the king holds the highest rank in the military hierarchy and appoints the heads of the defence forces.⁸³

3.1.2 Prerogatives relating to the legislative power

The Constitution confers legislative powers on the Parliament constituted of the king and the two Houses of Parliament.⁸⁴ The king, therefore, is an integral component of the legislature. While exercising powers relating to legislative functions, the king can summon Parliament to its first sitting after a general election,⁸⁵ address Parliament or attend its proceedings,⁸⁶ send messages to Parliament,⁸⁷ command an extraordinary sitting of the Parliament,⁸⁸ command new Bills,⁸⁹ and command that the Bills be deliberated and voted on in a joint sitting.

The Bills passed by the Parliament become law only when the king grants them royal assent.⁹⁰ As in other jurisdictions, the assent serves as a certificate that the Bill has passed through all the established parliamentary procedures.⁹¹ A king has yet to refuse to sign a Bill, but his power to do so is significant:⁹² as the protector of the Constitution he should be able to veto a Bill that subverts the democratic basis of the Constitution.⁹³ If the king refuses to assent, he must return the Bill with amendments or objections for Parliament to deliberate and vote on the Bill in a joint sitting.⁹⁴ Once that has happened and the Bill is again passed by Parliament, the king must grant his assent.⁹⁵

⁷⁸ *Ibid.*, Art. 17(3).

⁷⁹ *Ibid.*, Art. 2(16).

⁸⁰ *Ibid.*, Art. 2(17).

⁸¹ *Ibid.*, Art. 20(4).

⁸² *Ibid.*, Arts 28(1), 33.

⁸³ *Ibid.*, Art. 2(19)(i).

⁸⁴ *Ibid.*, Art. 10(1).

⁸⁵ *Ibid.*, Art. 10(5).

⁸⁶ *Ibid.*, Art. 10(7).

⁸⁷ *Ibid.*, Art. 10(8).

⁸⁸ *Ibid.*, Art. 10(12).

⁸⁹ *Ibid.*, Art. 13.

⁹⁰ *Ibid.*

⁹¹ Hazell & Morris (2020), p. 25.

⁹² Constitution of Bhutan (2008), Art. 13(10).

⁹³ Brazier (2013).

⁹⁴ Constitution of Bhutan (2008), Art. 13(10).

⁹⁵ *Ibid.*, Art. 13(11).

3.1.3 Prerogatives relating to the judicial power

In connection to the judiciary, first, the king exercises the power of judicial appointments. Second, the king continues to grant amnesty, pardon, and reduction of sentences even after the adoption of the Constitution.⁹⁶ In the latest example, the King granted pardons to 110 individuals who have served a minimum of six months in prison for breaching the COVID-19 protocols.⁹⁷ In 2014, the King granted pardons to 45 prisoners convicted of possessing quantities of tobacco products that exceeded the permissible limits.⁹⁸ Both cases led to some reforms. The first case had a judicial influence—judges decided not to sentence individuals for more than six months of imprisonment for breaching COVID-19 protocols. The second case led to the amendment of tobacco legislation to make sentencing more proportional.

Third, the king, as the protector of the Constitution, is empowered to initiate abstract judicial review. The king can seek a judicial opinion on a question of law or fact from the Supreme Court.⁹⁹ An example of a king using this power concerns review on the decision of the government to establish a town or a satellite town in all 20 *Dzongkhags* in 2016. In response, the Supreme Court, which is recognized in the Constitution as the guardian of this document, issued a writ of mandamus to the Election Commission to defer the elections for towns and satellite towns pending review of the laws concerned in view of the considerable financial resources involved.¹⁰⁰ The king may be able to play an important role through the use of abstract review in limiting the government from acting purely based on its partisan interest.

3.2 The ceremonial and religious functions of the king

As a symbol of national unity, the king has various ceremonial and religious functions. As we have seen, with the establishment of the absolute monarchy in 1907, the temporal and secular administration was unified in the person of the king.¹⁰¹ The Constitution continues to recognize the king as the head of both spiritual and temporal matters (*Chhoe-sid-nyi*).¹⁰² As the head of this dual system, the king appoints the head of the Central Monastic Body and is mandated to be a Buddhist.¹⁰³ The king, as a Buddhist guided by the Buddhist principles of peace, non-violence, compassion, and tolerance,¹⁰⁴ has the constitutional duty to protect all religions in Bhutan.¹⁰⁵ As the head of state and symbol of unity, the king is considered the proper authority to protect all religions without discrimination or politicization.¹⁰⁶

Ceremonially, the king is mandated to attend the opening and closing ceremonies of Parliament. Each parliamentary sitting is opened and closed by means of a Buddhist ceremony that has existed since the time of Zhabdrung.¹⁰⁷ This ceremony is believed to generate happiness in society and promote the unity as well as wellbeing of the nation and its

⁹⁶ *Ibid.*, Art. 2(16)(c); Mathou (2000), p. 234.

⁹⁷ Bbs.bt (2021a); Rai (2021).

⁹⁸ Bbs.bt (2014a).

⁹⁹ Constitution of Bhutan (2008), Art. 21(8).

¹⁰⁰ Bbs.bt (2021b); kuenselonline.com (2016b); kuenselonline.com (2016c).

¹⁰¹ Tobgye, *supra* note 1, pp. 13, 75.

¹⁰² Constitution of Bhutan (2008), Art. 2(2); Tobgye, *supra* note 101, p. 77.

¹⁰³ *Ibid.*, Art. 2(2).

¹⁰⁴ *Ibid.*, Art. 3(1).

¹⁰⁵ *Ibid.*, Art. 3(2).

¹⁰⁶ Tobgye, *supra* note 1, pp. 78, 110.

¹⁰⁷ The king is received in a joint sitting with *Chibdre* (a ceremonial procession to receive distinguished personalities) ceremony and the session is opened with the *Zhug-drel-phunsum tshog-pai ten-drel*. The king sits through the closing ceremony with the *Tashi-mon-lam*: Constitution of Bhutan, Art. 10(6); Jamtsho (2009), p. 2.

people.¹⁰⁸ Symbolically, before his coronation, the king must receive the *dar* (ceremonial scarf) from the *Machen* (the throne room) of the Zhabdrung following an age-old tradition.¹⁰⁹ After receiving the *dar*, the king is crowned on the *Golden Throne*.¹¹⁰ Once enthroned, the members of the royal family, the members of the Parliament, and the public office-holders must take an oath of allegiance to the king.¹¹¹ Further, the Constitution adopts 17 December as the National Day—the day Bhutan became a hereditary monarchy in 1907.¹¹² Since then, the day has been celebrated as the National Day on which the king addresses the nation. Such national addresses are seen as an important source of national goals and objectives.

The ceremonial and religious functions just mentioned establish the king as the head of the state and the symbol of unity, affirming that he and the royal family exist to serve the country and the people,¹¹³ and identifying Bhutan as a Buddhist country that aspires to be tolerant of other religions.

3.3 Protector of the Constitution and the welfare of the people

In some countries, the reasons for the royal family to take up social work are questioned or linked to the decline of the Crown's political importance.¹¹⁴ However, in Bhutan, social work by members of the royal family and looking after the welfare of the people have been the most important functions of the monarchy. Even at the peak of the political power of the Crown, the king was known as the *Kidui Pham*: literally, the father of welfare. The *kidu* is a traditional power of the king that is by now constitutionally recognized.¹¹⁵ The king can grant citizenship, land *kidu*, and other *kidus*.¹¹⁶ These provisions, when read together, appear to identify Bhutan as a welfare state and the king as the source of welfare.

In practice, *kidu* involves providing relief to victims of natural disasters, land grants, and citizenship grants. The king grants citizenship *kidu* almost on the yearly basis. In 2021 alone, the King granted citizenship *kidu* to 422 individuals.¹¹⁷ Concerning relief *kidu*, the King, for example, provides relief to those whose crops are damaged by heavy rain,¹¹⁸ and to victims of flooding¹¹⁹ and fires.¹²⁰ In recent times, the King has sought to support those who lost their source of income due to the pandemic through relief *kidu*.¹²¹ As of March 2022, over 50,000 people are estimated as living a normal life with the support of the King's *kidu*.¹²² To support such relief, the King sold his own shares worth more than Nu.2 billion.¹²³

The King continues to grant lands to the landless and those interested in farming to secure food self-sufficiency.¹²⁴ To support community businesses, the King also grants

¹⁰⁸ Tobgye, *supra* note 1, p. 214.

¹⁰⁹ Constitution of Bhutan, Art. 2(4).

¹¹⁰ The *Golden Throne* is commonly referred to term for the throne of the protector or upholder of the dual system.

¹¹¹ Constitution of Bhutan, Art. 2(5).

¹¹² *Ibid.*, Art. 1(7).

¹¹³ Tobgye, *supra* note 1, p. 83.

¹¹⁴ Hazell & Morris, *supra* note 91, p. 120.

¹¹⁵ Constitution of Bhutan (2008), Art. 2(18).

¹¹⁶ Constitution of Bhutan, Art. 2(16)(b).

¹¹⁷ Kuenselonline.com (2021a).

¹¹⁸ Wangchuk (2021).

¹¹⁹ Bbs.bt (2014b); Thebhutanese.bt (2013); bbs.bt (2016).

¹²⁰ Bbs.bt (2019); bbs.bt (2015).

¹²¹ Cabinet.gov.bt (2020); Tshering & Dorji (2021), p. 289.

¹²² Kuenselonline.com (2021b); Royalkidu.bt.

¹²³ Palden (2021).

¹²⁴ Thebhutanese.bt (2016); thebhutanese.bt (2021); bhutantodays.blogspot.com (2009); kuenselonline.com (2016a).

building materials, seeds, and seedlings to the people.¹²⁵ Such *kidu* functions are parts of the king's function of protecting and upholding the Constitution in promoting the greater national interest, the common good, and the wellbeing of the people.¹²⁶ Finally, as the protector and upholder of the Constitution, the king also has the residual power to act on matters not provided for under the Constitution to avoid any unforeseen constitutional crisis.¹²⁷

4. Regulating the constitutional monarchy

Having discussed the powers of the monarchy, the article now turns to explore how the institution of monarchy is regulated in terms of the line of succession, the size of the royal family, and the royal finances, as well as how the individual behaviour of the monarch is regulated.

4.1 The regulation of the monarchy

The Constitution clearly defines the size of the royal family. Only reigning and past kings, their queens, and the royal children born of lawful marriage are recognized as the members of the royal family.¹²⁸ The Fourth King, during the public consultation regarding the Constitution, informed the people that Bhutan's priority should be the country's benefit and interest, and that therefore the number of members of the royal family must be limited.¹²⁹

When it comes to the royal finances, the king and the members of the royal family receive annuities from the state determined by the Pay Commission and approved by Parliament.¹³⁰ They are also entitled to the provision of palaces and residences for official and personal use.¹³¹ The members of the royal family are exempted from paying taxes on these annuities and properties.¹³² While many royal families around the world are believed to be enjoying very privileged lives, living in large palaces with many staff,¹³³ the reality in Bhutan is very different. The members of the royal family live relatively modest lives, in residences not bigger than many private citizens' homes that are staffed by and often shared with military staff. The officials working for the Royal Offices do not enjoy any privilege, as they are part of the civil service and paid for by the government like other public servants.

The title to the throne can only pass on to the legitimate descendants of the First King as enshrined in the social contract of 1907,¹³⁴ and to a direct lineal descendant born of lawful marriage born from a queen who is married to the king as per the religious ceremony of *Tashi Ngasol*,¹³⁵ in order of seniority, with a prince taking precedence over a princess.¹³⁶ In the event of shortcomings in the elder prince, the king must select and proclaim the most capable prince or princess as heir to the throne.¹³⁷ If the king has no direct lineal

¹²⁵ Kuenselonline.com (2019).

¹²⁶ Constitution of Bhutan (2008), Art. 2(18); Tobgye, *supra* note 1, 98.

¹²⁷ Tobgye, *supra* note 1, p. 97.

¹²⁸ Constitution of Bhutan (2008), Art. 2(12).

¹²⁹ Tobgye, *supra* note 1, p. 90.

¹³⁰ Constitution of Bhutan (2008), Art. 2(13)(a).

¹³¹ *Ibid.*, Art. 2(13)(b).

¹³² *Ibid.*, Art. 2(13)(c).

¹³³ Hazell & Morris, *supra* note 91, p. 194.

¹³⁴ Constitution of Bhutan (2008), Art. 2(3).

¹³⁵ *Ibid.*, Art. 2(3)(a); Tobgye, *supra* note 1, p. 79.

¹³⁶ *Ibid.*, Art. 2(3)(b).

¹³⁷ *Ibid.*, Art. 2(3)(b).

descendant, the title shall pass to the nearest collateral line of the descendants of the king.¹³⁸ The Constitution prohibits the passing of the title to a descendant who is incapable of exercising the royal prerogatives because of physical or mental infirmity or to a descendant whose spouse is not a natural-born citizen of Bhutan.¹³⁹

4.2 Constraints on the monarch

There are traditional as well as constitutional mechanisms to regulate the powers of the monarch. The most relevant are featured in this section.

4.2.1 Express constitutional immunity and constraints

The king has considerable restrictions in terms of marriage, freedom of religion, elections, and abdication. Unlike other Bhutanese citizens, the king is mandated to marry a natural-born citizen.¹⁴⁰ The Constitution Drafting Committee believed that if a king marries a foreigner, the security of Bhutan could be endangered.¹⁴¹

Likewise, while Bhutanese citizens have a fundamental right to freedom of thought, conscience, and religion,¹⁴² the king must be a Buddhist as the upholder of the dual system.¹⁴³ Further, the king as the protector of all religions is constrained in how he exercises his constitutionally mandated religion.¹⁴⁴

The king and the members of the royal family as apolitical members are not allowed to participate in elections. The election law restricts the members of the royal family from either joining political parties or participating in the electoral process.¹⁴⁵ Therefore, the king and the members of the royal family are not only denied the right to vote, but also prevented from having any affiliation with a political party.

The Constitution requires the king to step down or abdicate in two situations. First, unique to Bhutan is that the king is mandated to step down in favour of the crown prince once he reaches the age of 65.¹⁴⁶ Conventionally, the throne was passed to successor only on the demise of the reigning king. While the people in all districts opposed this provision,¹⁴⁷ the Fourth King maintained that it would be in the best interest of the nation that the king is physically fit to discharge his many responsibilities.¹⁴⁸ He further observed that future kings may not be willing to step down and hand over the throne, and that a king who is old will be useful neither to the country nor to the people.¹⁴⁹

Second, the king must abdicate when he is found to have committed a wilful violation of the Constitution or when he suffers from a permanent mental disability.¹⁵⁰ According to Sonam Tobgye, the king as the protector and upholder of the Constitution must follow the Constitution in letter and spirit.¹⁵¹ While the Constitution does not define “wilful violation,” in the king’s words, the Constitution should not be used for his personal benefit

¹³⁸ *Ibid.*, Art. 2(3)(d).

¹³⁹ *Ibid.*, Art. 2(3)(e), (f); the natural-born citizen is defined as a person both of whose parents are citizens of Bhutan: *ibid.*, Art. 6(1).

¹⁴⁰ *Ibid.*, Art. 2(3)(f).

¹⁴¹ Tobgye, *supra* note 1, p. 82.

¹⁴² Constitution of Bhutan, Art. 7(4).

¹⁴³ *Ibid.*, Art. 2(2).

¹⁴⁴ *Ibid.*, Art. 3(2).

¹⁴⁵ Election Act of Bhutan, s. 183.

¹⁴⁶ Constitution of Bhutan, Art. 2(6).

¹⁴⁷ Tobgye, *supra* note 1, p. 84.

¹⁴⁸ *Ibid.*

¹⁴⁹ *Ibid.*, p. 85.

¹⁵⁰ Constitution of Bhutan (2008), Art. 2(20).

¹⁵¹ Tobgye, *supra* note 1, p. 98; Constitution of Bhutan (2008), Art. 2(18).

but for the good of the people, the country's sovereignty and security.¹⁵² Whether the king has wilfully violated the Constitution or is suffering from a permanent mental disability is for Parliament and the people to decide. First, the motion for abdication must be introduced by at least two-thirds of the total number of MPs, and will then be tabled for discussion in a joint sitting of Parliament presided over by the chief justice of Bhutan.¹⁵³ Second, to pass a motion for abdication, three-quarters of the total members of the Parliament must support the motion.¹⁵⁴ Third, then the resolution is presented to the people in a national referendum, and if the resolution is approved by a simple majority of the total number of votes cast, the king must abdicate in favour of the heir next in line.¹⁵⁵

However, the monarch enjoys both civil and criminal immunity. The king is not answerable in a court of law for his actions and his person is sacrosanct.¹⁵⁶ While Parliament is authorized to enact a law to regulate the payment of annuities to the royal family,¹⁵⁷ Parliament is restricted from making laws or amending the provisions of Article 2 (regarding the institution of monarchy).¹⁵⁸ As mentioned, an amendment of this provision is only permitted through a national referendum.¹⁵⁹ This constitutional arrangement suggests that while the king is considered above the law, the king is not above the people as a collective.

Earlier, I explained that the king enjoys considerable constitutional powers. However, these powers are not absolute. For example, judicial personnel are appointed on the recommendation of the National Judicial Commission,¹⁶⁰ and other holders of constitutional offices on the joint recommendation of the prime minister, the chief justice, the Speaker, the chairperson of the National Council, and the opposition leader.¹⁶¹ Government officials including ministers are appointed by the king on the recommendation of the prime minister.¹⁶² Likewise, the power to proclaim an emergency is exercised on the written advice of the prime minister, and the Constitution requires the Cabinet to aid and advise the king in the exercise of his functions.¹⁶³

4.2.2 Moral and religious limitations

In the Bhutanese context, it is believed that the restraint on the power of the king is an intrinsic part of the concept of the king itself.¹⁶⁴ The king is known as *Chogyal* (*Dharmaraja*) or *Chakravartin* (wheel-turning king). These two concepts are connected to notions of Buddhist kingship, which require the king to rule based on righteousness, and the king is expected to be compassionate, moral, selfless, and just.¹⁶⁵ *Dharmaraja* or *Chakravartin* is expected to rule based on Dharma—according to Buddhist values and principles of equity, justice, and the highest morality.¹⁶⁶ The concept of Dharma acts as a moral constraint on the arbitrary exercise of power. The king who rules according to the dual system is equated with the Buddhist king.¹⁶⁷ This concept of kingship is constitutionalized through

¹⁵² Tobgye, *ibid.*, p. 103.

¹⁵³ Constitution of Bhutan (2008), Arts 2(21), 2(22), (23).

¹⁵⁴ *Ibid.*, Art. 2(24).

¹⁵⁵ *Ibid.*, Art. 2(24), (25).

¹⁵⁶ *Ibid.*, Art. 2(15).

¹⁵⁷ *Ibid.*, Art. 2(13)(a).

¹⁵⁸ *Ibid.*, Art. 1(1).

¹⁵⁹ *Ibid.*, Art. 2(26).

¹⁶⁰ *Ibid.*, Arts 21(4), 21(5), 21(11), 21(12).

¹⁶¹ *Ibid.*, Arts 27(2), 24(2), 25(2), 26(2).

¹⁶² *Ibid.*, Arts 17(3), 29(2), 30(1), 2(19)(l), 2(19)(k), (m), (p), (q).

¹⁶³ *Ibid.*, Art. 21(23).

¹⁶⁴ Kinga (2009), *supra* note 52, p. 19.

¹⁶⁵ *Ibid.*, pp. 17–8.

¹⁶⁶ Aries, *supra* note 5, p. 145; Kinga (2009), *supra* note 59, p. 18.

¹⁶⁷ Ardussi, *supra* note 3, pp. 17–18; Ura (2010), p. 56; Kinga, *supra* note 52, pp. 60–1.

Article 2(2), which states the king shall be the upholder of the *Chhoe-sid*, who, as a Buddhist, is expected to reign based on the Buddhist principles and values of peace, non-violence, compassion, and tolerance.¹⁶⁸ Therefore, the Bhutanese concept of kingship itself imposes moral and religious constraints on the king.

5. Endurance of the monarchy

Maartje De Visser and Andrew Harding suggest that various socio-legal and political factors contribute to the endurance of monarchy in Asia.¹⁶⁹ This part of the article examines some of these factors that contributed to the endurance of the Bhutanese monarchy. The first factor may be the monarchy as having the reputation of always having been there, with the Bhutanese hereditary monarchy tracing back its lineage to the 1907 social contract. The second factor conceives of the monarchy as an institution instrumental in ensuring political stability. As discussed earlier, the very purpose of establishing a hereditary monarchy was to ensure stability in political leadership. After the demise of Zhabdrung, there were continued controversies in the politics of identifying Zhabdrung's reincarnation and in the process of appointing *Desi* (secular leader).¹⁷⁰ The Bhutanese hereditary monarchy is commended for ensuring political stability for more than a century. Its structural neutrality also contributes to political stability. The monarchy is an apolitical institution that stands above partisan politics, while the members of the royal family as discussed earlier are restricted from participating in elections and being affiliated with a political party. Similarly, the connection that the monarchy has with tradition and religion also contributes to political stability, in its guise as the symbol of unity. For example, the Buddhist section of the people revere the king as an emanation of *Boddhisatva* (compassionate enlightened being), while Hindus conceive him as an embodiment of Vishnu (Hindu God).¹⁷¹ The third factor is the individual personality of the kings and their reputation. The trust and confidence earned by the successions of kings over more than a century of monarchical governance, aided by their visions and actions to advance the country, have legitimized the monarchy as an important feature of Bhutanese constitutional identity. The kings' strong willingness to adhere to both constitutional and moral constraints, and his refusal to live in a luxurious palace, continue to win the hearts of the Bhutanese people. The willingness of the kings to lead as 'servant leaders' influences the minds of public servants and of the people at large.¹⁷² Their willingness to sacrifice their livelihoods for the benefit of people and the country also played a huge role. The Fourth King not only sacrificed his childhood, but also led the military operation to flush out Indian militants from the country in 2003 to secure Bhutan's territorial integrity.¹⁷³ As Sonam Tshering and I have discussed, the King, during the COVID-19 pandemic, not only inspired national unity among the population, but also travelled to high-risk areas throughout the country, leaving his home and family behind to guide and support the government's response to the pandemic.¹⁷⁴

Amid the public health crisis, the King found time to keep himself informed of the people's needs and to envision Bhutan's future. Speaking to the people during the 113th National Day Celebration, the King proclaimed that Bhutan must aim at graduating from

¹⁶⁸ Constitution of Bhutan (2008), Art. 3(1); Tobgye, *supra* note 1, p. 58.

¹⁶⁹ De Visser & Harding (in this issue).

¹⁷⁰ Phuntsho, *supra* note 1, p. 305; Kinga (2009), *supra* note 59, p. 105.

¹⁷¹ Kuenselonline.com (2020).

¹⁷² Ura (2020).

¹⁷³ Tshering & Dorji, *supra* note 121, p. 283.

¹⁷⁴ *Ibid.*, pp. 282–3.

a developing country to a fully developed country.¹⁷⁵ In preparation, he suggested immediate reforms of the civil service as there is a mismatch between its structure and future challenges and national goals.¹⁷⁶ At the same time, he also suggested reforming educational policies and institutions to ensure the quality of education.¹⁷⁷ Similarly, during the 114th National Day, the King openly expressed his concerns and disappointments. He said that people cannot continue to over-rely on *kidu*, and that therefore, Bhutan must act immediately to promote a sustainable greater economic prosperity based on good governance, smart policies and strategies, innovative ideas, and creativity, supported by a culture of hard work and determination.¹⁷⁸ Therefore, the King is seen by many Bhutanese citizens as an important family member who can be trusted at all times due to the strong personal relationship between the King and his subjects.¹⁷⁹ This conception of the relationship between the King and the people is neatly captured in his Coronation Day speech:

Throughout my reign, I will never rule you as a King. I will protect you as a parent, care for you as a brother and serve you as a son. I shall give you everything and keep nothing; I shall live such a life as a good human being that you may find it worthy to serve as an example for your children; I have no personal goals other than to fulfil your hopes and aspirations. I shall always serve you, day and night, in the spirit of kindness, justice and equality.¹⁸⁰

The fourth factor that accounts for the monarchy's endurance is the King's willingness or ability to hybridize "different traditions as well as the diverse sources that constitute those traditions."¹⁸¹ From the earlier discussions regarding the evolution from a theocratic monarchy to a constitutional monarchy, braiding is highly visible. While the dual system and the concept of the Buddhist king continue to remain as a founding value of the Bhutanese political system,¹⁸² the successions of monarchs through gradual reforms adopted modern ideas for the benefit of the people. While the theocratic monarchy prioritized supporting religious institutions, the hereditary monarchy embedded itself into Bhutanese society by choosing to address the basic concerns of all citizens.¹⁸³ While the First and the Second Kings introduced modern education and consolidated foreign relations, the Third King initiated the process of constitutionalizing the monarchy by establishing proto-democratic institutions and processes, with the introduction of the vote of no confidence marking the introduction of the constitutional monarchy in Bhutan, according to the King himself.¹⁸⁴

The Fourth King, following on from the initiatives launched by his father, began the process of consolidating the constitutional monarchy. During this 34-year reign, the pro-democratic political and institutional structures were further developed and expanded. To be clear, there was no sudden overhaul in the system; rather, the political institutions deemed necessary for democracy were put in place well ahead of the drafting of the 2008 Constitution. The King, fully aware of the existence of favourable preconditions

¹⁷⁵ The Fifth King's Speech (113th National Day Celebration), <https://www.youtube.com/watch?v=5gQt7QsrlxA> (accessed February 2022).

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.*

¹⁷⁸ Kuenselonline.com (2021c).

¹⁷⁹ Tshering & Dorji, *supra* note 121, p. 288.

¹⁸⁰ Kuenselonline.com (2018).

¹⁸¹ De Visser & Harding, *supra* note 169.

¹⁸² Kinga (2009), *supra* note 59, p. 346.

¹⁸³ *Ibid.*, pp. 196–7.

¹⁸⁴ National Assembly, 30th Session, *supra* note 20.

and a supportive institutional framework, therefore decided that the time was ripe to embark on the transition to a democratic constitutional monarchy in Bhutan.

6. Conclusion: monarchy as an expression of constitutional identity

By way of conclusion, I suggest that the nature of the Bhutanese monarchy makes it an important part of the country's constitutional identity. As De Visser and Harding posit, one way of understanding the functioning of a monarchy is by seeing the monarch as an expression of, or guardian of, national constitutional identity.¹⁸⁵ From the earlier discussions—including how monarchy has evolved, the manifold roles it plays, and the constraints it is subjected to in the constitutional era, it is clear that the monarchy has become an important feature of Bhutan's constitutional identity. First, the Constitution establishes Bhutan as a welfare state, and this concept of welfarism is neatly linked with the institution of monarchy. The monarchy is seen as a source of the people's welfare, with the precise meaning thereof having evolved over time. For example, the theocratic ruler *Zhabdrung* established himself as a refuge for all beings and the source of welfare, understood as the liberation of individuals from suffering from the Buddhist perspective. Successive hereditary monarchs stood for and acted for the welfare of the people—initiating developmental activities with the sole objective of ensuring the welfare of the people. They focused not only on education and health reforms, but also on remaining connected to the common people. Therefore, traditionally and socially, the monarchs came to be known as *Kidui Pham*. This concept is now incorporated in the Constitution as a royal prerogative, and the reigning King continues to exercise this traditional power to ensure the welfare of the people.

Second, the institution of the monarchy is seen as the symbol of the state and its unity from a social, religious, and constitutional perspective. The symbolic standing of the monarchy is not something that can be constitutionally conferred, but rather is attained through popular support and social learning. The hereditary monarchy in particular has brought many decades of political stability since its establishment in 1907 after centuries of factional disputes that ensued after the death of *Zhabdrung*. The Fourth King always iterated the importance of working together, and he was able to unify the people to work together with the government for common good. As I earlier mentioned, the reigning King continues to play a very important role in managing the COVID-19 pandemic by inspiring the unity of Bhutan's response against the pandemic—leading by example as a servant leader.¹⁸⁶ Another aspect of the symbol of unity is the union of religion and the state in the person of the King. This has its origin in the theocratic monarchy established by the *Zhabdrung*, which is connected to the Buddhist concept of *Dharmaraja*. The King is revered as the emanation of the Buddha of Compassion who took birth as a king to benefit people by administering the dual system of law, viz. religious law and secular law. The King also features in the traditional concept of *TSA-WA-SUM*, which may be translated as three roots or foundations. It stands for the king, country, and the people on which the nation is founded. Therefore, the king as the symbol of unity is socially recognized and supported by religious-cultural belief systems. The text of the Constitution reinforces this social role of the monarchy as a symbol of unity as it recognizes the monarchy as sacrosanct and inviolable, and establishes it as the institution that is above politics—a politically neutral institution to promote stability.

Finally, the monarchy as the protector of constitutional identity is inextricably intertwined with its value as an expression of that self-same constitutional identity. Its role as a

¹⁸⁵ De Visser & Harding, *supra* note 169.

¹⁸⁶ Tshering & Dorji, *supra* note 121, pp. 282–6.

guardian forms an essential part of the identity of the monarchy itself. The king as the guardian of constitutional identity plays three roles: first, he protects and upholds the Constitution in the best interest and for the welfare of the people; second, he protects the dual system of governance; and third, he protects all religions. The first role, by extension, empowers the king to act for the welfare of the people, and anything he does to that effect may not be considered as a wilful violation of the Constitution that could require him to abdicate. Therefore, the exercise of the function of protecting the Constitution is both empowered and limited by the “best interest and welfare of the people” standard. Further, this role entails that the king protects and promotes Bhutan as a welfare state. This brings us to the second role, viz. safeguarding the dual governance system to effectively promote the welfare and happiness of the people. The dual system as a principle of theocratic monarchy, as I discussed earlier, is established with the sole purpose of creating happiness for all sentient beings. This is evident from the common saying in Bhutan: “The King loves his people, the people desire happiness, and the law is the foundation of happiness.” Law is understood as the dual system of law, and the role of the king as to administer the dual system of law to promote the happiness of the people he loves. As explained, this role is empowered and constrained by the concept of Buddhist kingship. As a virtuous Buddhist king, the king must adhere to the principles and values of peace, non-violence, compassion, and tolerance. This brings us to the third role, viz. the monarch as the symbol of unity and also as an apolitical institution with responsibility regarding all religions in Bhutan. This responsibility again is guided by the Buddhist principle of interdependence and tolerance. The successive kings have carried out this function diligently—as discussed earlier, both Buddhist and Hindu sections of Bhutanese people are able to connect the king to their respective religious symbolism.

In sum, the Bhutanese monarchy has established itself as a driver of change, source of and protector of the welfare of people, the symbol of unity inspiring harmony, and in the process the monarchy has become a core expression of Bhutanese constitutional identity as well as the guardian thereof. It could perhaps be said that one of the most typical features of the Bhutanese monarchy is its role in successfully braiding traditional values and institutions with modern democratic values and institutions. Such braiding not only involved devolving sovereign power but also subjecting its own powers to constitutional constraints. As Thierry Mathou points out, the Bhutanese monarchy has always been and continues to be the leading force of careful and calculated change.¹⁸⁷ It will be interesting to see how the braiding of traditional beliefs and modern democratic values will evolve, and how the role of the monarchy may develop at the same time.

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